

The Sentinel

OF CHRISTIAN LIBERTY

VOL. XVIII

NEW YORK APRIL 30, 1903

NO. 18



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This so-called criminal statute depends not upon any distinct and ascertainable fact or defined crime, but upon the varying opinions of different magistrates—upon the uncertain meaning of the words "worldly" and "necessity," and the peculiar mental or moral or spiritual views of the magistrate called upon to construe the statute. See page 283.

The spirit of our institutions especially is hostile to all legislation punishing men for crime that does not explicitly and accurately define the nature of the offense. See page 281.

A law which changes from day to day and depends upon the private beliefs and opinions of magistrates for its meaning is Draconian in its nature. See page 282.

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The Sentinel

OF CHRISTIAN LIBERTY

Set for the defense of human rights, especially the rights of conscience. The only periodical in the United States especially devoted to the maintenance of the Christian and American principle of complete separation of church and state. The Sentinel is not a periodical of abstractions and speculation; it discusses live issues that deeply concern every individual.

JOHN D. BRADLEY, Editor.

Editorial Contributors:

A. T. JONES, A. G. DANIELLS, M. C. WILCOX,
L. A. SMITH, C. P. BOLLMAN.

We believe in the religion taught and lived by Jesus Christ.

We believe in temperance, and regard the liquor traffic as a curse to society.

We believe in supporting civil government and submitting to its authority.

We believe that human rights are sacred, and that they indissolubly inhere in the moral nature of the individual.

We deny the right of any human authority to invade and violate these inalienable rights in any individual.

Therefore we deny the right of any civil government to legislate on matters of religion and conscience.

We believe it is the right, and should be the privilege, of every individual to worship God according to the dictates of his own conscience, free from all dictation, interference, or control on the part of civil government or any other external authority; or not to worship at all if he so chooses.

We also believe it to be our duty, and no less the duty of all others, to oppose religious legislation and all movements tending toward the same, to the end that all the people may freely enjoy the inestimable blessing of liberty, which is theirs by virtue of the unbounded wisdom and beneficence of the Author of their being.

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A NUMBER of orders have been, and are still being, received for extra copies of the issue of April 2, "The Massachusetts Hearing Number." We regret to say that we are unable to supply them. Several hundred extra copies were printed when running off the regular edition, but these were soon gone. We are sorry to disappoint those who wish copies of this particular number, but have to do so.

SOON we will begin the publication of a series of articles by W. A. Colcord on a variety of different religious liberty topics. The subjects of these articles are given below:

- Principles too Little Understood;
- Origin and Object of Civil Government;
- The Church and Its Work;
- Individual Responsibility;
- Grace and Freewill;
- Not a Question of Majorities;
- What Majority Rule in Religious Things Means;
- Religious Persecution a Legacy and Test;
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The Sentinel

OF CHRISTIAN LIBERTY

VOL. XVIII

NEW YORK, THURSDAY, APRIL 30, 1903

No. 18

A law which prohibits "worldly" employments should make provision for taking people out of the world during the time to which the prohibition applies.



No wonder it is so difficult to determine from the Sunday law itself just what is the crime it forbids. It does not forbid any real crime at all; it simply tries to make crimes out of things that are not crimes at all.



The "crime" which the Sunday law forbids is of such a nature that it cannot certainly be known in any particular case until the trial magistrate, out of his own private opinion and judgment, decides that the act of the defendant is a violation of the law. And, of course, what one magistrate may hold to be a violation of the law another may hold to be no violation at all.



Two weeks ago we said that in principle the old Sunday law of Pennsylvania was identical with the Sunday laws of the other States. We might have said that it is not only identical in principle but practically so in text, for there are no differences of any consequence between its provisions and those of the Sunday laws of the other States. Practically all of them prohibit "worldly employment or business" and permit "works of necessity and charity." Therefore the ar-

gument of Ex-Judge Gordon against the old Pennsylvania law, a portion of which is given in this issue, is just as applicable to all the other State Sunday laws. They are all lacking in the requirements necessary to give them validity and make them susceptible of enforcement by proper and lawful procedure.



The Florida sheriff struck the nail on the head when he asked himself if the claim that the operation of street-cars, railway trains, boats, and the conducting of other businesses that are freely permitted on Sunday is "work of necessity," is not "rather a subterfuge than an actual truth"? Yes it is, notwithstanding it is a subterfuge that the courts universally sanction. These things are in no sense necessities in the purview of the Sunday legislation that is retained upon the statute books of American States, and are as much in violation of it as any "worldly" employment or business that can be named. It is to be hoped that more officials, when they are called upon to engage in Sunday enforcement, will carefully scrutinize the law before they undertake to enforce it. The courts have been altogether too prone to interpret and construe this legislation according to the times and circumstances, and thus have perpetuated it. A literal interpretation and application of this legislation would greatly serve to exhibit its real character and to cause its abolition.

The idea that the United States government, or that the President of the United States, is concerned with certain ecclesiastical affairs of the Papacy continues to appear from time to time in dispatches. A dispatch from Rome a short time ago concerning "the appointment of Archbishop Ireland as cardinal," informed us that "personages of high authority at the Vatican say that his nomination is likely in two contingencies—as a reward when the Philippine question is satisfactorily solved, or in the event of his nomination being asked for directly or indirectly by the supreme authority of the United States." About the same time another dispatch from Rome informed us that "the Vatican has always instructed the apostolic delegates to keep in touch with the trend of public opinion ever since Cardinal Satolli was in Washington, when the Vatican understood that President Cleveland would view with satisfaction the nomination of Archbishop Ireland." The Springfield Republican remarks with regard to these dispatches that "there is some one in Rome who sends out dispatches concerning affairs in America of which he knows nothing," and declares that they are both absurd. "Mr. Roosevelt has no concern or business in the work of any church," says the Republican, "nor is the future of Archbishop Ireland bound up with the Philippine question. And President Cleveland never had any opinion to express regarding the promotion of John Ireland." The situation certainly should be such that these dispatches could be dismissed as utter absurdities, but unfortunately it is not such. The idea that they advance is a part of the general scheme of the Papacy with regard to the United States, and what has been accomplished in recent years in furtherance of that scheme makes it anything but absurd. It can be depended upon that these dispatches, instead of being the inventions of some

uninformed person in Rome, are inspired by "personages of high authority at the Vatican." Their meaning is simply this: The Vatican is seeking to use the matter of Archbishop Ireland's promotion as a means of furthering her scheme with regard to the United States—as a means of entangling the American government in her meshes. She is trying to inveigle the government into asking for Ireland's promotion—into taking a hand in an ecclesiastical affair of her own. These dispatches are simply an indirect invitation and solicitation from her to "the supreme authority of the United States" to take this step, and she is kind enough to let "the supreme authority of the United States" know that if it is not convenient for it to take this step "directly" it will be all right for it to take it "indirectly." She knows full well that if she can get "the supreme authority of the United States" to take such a step, even "indirectly," she will have made an immense stride in her scheme to gain control of the American government and nation. The very thing that she is trying to accomplish in this Ireland matter she tried to accomplish during the negotiations at the Vatican last summer when she proposed that President Roosevelt name to the Vatican the "apostolic delegates" for Washington and Manila, and when again she proposed that the fifth member of the tribunal of arbitration that was proposed should "be chosen in common accord by Pope Leo and President Roosevelt." And she has had in mind the same thing in the matter of the appointment of high ecclesiastical dignitaries in the Philippines. And it is by no means certain that she has not been partially successful in her scheme in this last matter, for several weeks ago a dispatch from Manila informed us that "the Vatican has received from Mgr. Guidi, the Apostolic Delegate at Manila, propositions regarding the appointment of new bishops un-

der the archbishopric of Manila, the center around which the Philippine Catholic hierarchy will gather," and that "*it is understood at the Vatican that the two Americans proposed are persona grata both at Washington and with Governor Taft.*"



A good illustration of the indefiniteness of Sunday legislation, and of the fact that its enforcement calls for the assumption and exercise of unwarranted powers by the officials undertaking to enforce it, is afforded by what is reported elsewhere from Jacksonville, Fla. In a given case the sheriff could not determine whether or not there was a violation of the law. He had to go to an attorney, and then to the governor of the State. But evidently the governor did not clear up the matter for him, and so he had to return to his attorney to "ascertain my [his] duty." And now, not on his own judgment, but on the strength of the opinion of an attorney, he proposes to treat as "unlawful" assemblages of citizens and to arrest persons without warrants for doing what may or may not be a violation of law, what he himself does not know to be a violation of law, what, in fact, his common sense tells him is as much in harmony with the law as many other things that are held to be in harmony with it.



An organization of the clergymen of Wood County, Ohio, "to prevent the game of baseball being played in the county on Sunday during the coming season," was effected at a meeting held in the parlors of the Methodist church in Bowling Green on March 26.

Each of the ministers present expressed his disapproval of the indulgence in the game on Sunday, and pledged himself to do all within his power to stop it in Wood County. They all, however, expressed their approval of baseball and other athletic sports if properly conducted and indulged in on other days than the Sabbath, and said they would do all within

their power to support the game if thus conducted.

Then when these clergymen cause the arrest and prosecution of Sunday ball players during the coming season it will be for doing nothing else than what the ministers themselves would heartily approve of if "indulged in on other days than the Sabbath." This makes quite clear what sort of an offense it is that these clergymen propose to employ the law in preventing.



"To harmonize with the religious sentiment now pervading our city, and in order to give ourselves an opportunity to attend divine service"—this was the way in which certain butchers of Shelbyville, Ill., recently expressed their reason for inaugurating the Sunday closing of their shops. Religion cannot be separated from the matter of Sunday closing, and it seldom fails to stand out prominently unless efforts are made to hide it.



A petition "praying for the strict enforcement of all Sunday laws," and containing "several hundred signatures," was presented to the mayor of Stamford, Conn., on March 27 by a delegation from the local W. C. T. U. The mayor told the ladies that he would like to please them in the matter, but that public sentiment would not uphold him in a policy of "strict enforcement of the Sunday laws."



It is necessary to postpone for a few weeks yet the publication of the matter that we expected to present in this number on the subject of religion in the public schools, or public support of religious teaching. Through unavoidable causes we have also been delayed in presenting some other matter that was announced a few weeks ago. It will appear in the next issue.

The Supremacy of the Papacy

By Alonzo T. Jones

XVI

Another Matter in which the Papacy is Gaining Power Over the Nation

WE have seen what a hold the Papacy is getting upon the United States government through the Philippines. We have seen how she is determined to make felt in the United States itself this power which she holds in the Philippines. And there is no question whatever but that she can, by the use of the "fifteen millions of American Catholics," which she boasts, make her power felt inside the United States, and upon the United States itself, as well as in the Philippines and upon the Filipinos.

That one thing alone is sufficient to cause every person who cares for the welfare of this nation to think most seriously; and yet that is only one item in the count. Affairs of the United States itself, without reference to any other country, or any other part of the jurisdiction or government of the United States, are such that they are to-day giving to the Papacy as clear an opening to power over this nation as anything could possibly do. And through the opening created by these affairs of daily occurrence, the Papacy is directly walking to power over this nation.

The matter of the anthracite coal strike has occupied a great part of the attention of this whole nation ever since it began in the summer of 1902. When the time came that overtures were accepted that would bring the strikers and owners together, a commission was appointed; and to it the whole subject was committed. The first proposition was that the commission should be composed of five men of different occupations, but of such knowledge and standing as would, in a sense, make them experts. This proposition was made from the side of the own-

ers. It was first opposed by the leader of the miners, but "Mr. Mitchell was sent for; and . . . President Roosevelt convinced him that it would be possible to choose perfectly fair men from the category presented by the operators, and names were freely discussed." This discussion secured the consent of Mr. Mitchell, but with most important additions. For when the representative of the owners "met the President in Washington, and the employers' interests were presented, he consented that the President should add a sixth member to the five they had proposed." And this sixth member was Bishop Spalding of the Catholic Church, for "to those [five] the President chose to add a sixth who should be an eminent Roman Catholic prelate, nearly all the miners being adherents of the Catholic Church."

Thus it is plain that the conference between Mr. Mitchell, the head of the strikers, and the President of the United States tended directly to this one point of having the Roman Catholic Church, in "an eminent Roman Catholic prelate," definitely recognized and represented in the settlement of that controversy. Accordingly, the dispatches reporting this thing from Washington at the time said that Bishop Spalding was added to the original number of five, "as a concession to the strikers."

Yet this recognition of the Catholic Church didn't stop there. A recorder to the commission was appointed, and he was a man who "has been, for many years, an active teacher in the economic department of the great Catholic University at Washington." Now, though

it may be possible that this gentleman may not be confessedly a member of the Catholic Church, it is certain that no man could ever be "for many years an active teacher in the great Catholic University at Washington," or any other Catholic university or school, who is not to all intents and purposes an accepted Roman Catholic.

Nor did the recognition of the Catholic Church end with this. Two assistants were appointed for the recorder, and one of these was a professor of political economy in the Catholic University at Washington.

Now when such a matter, the first one of its kind that has come to the notice of the national government, in being successfully carried through, must be so largely, almost predominantly, connected with the Catholic Church; and when this first instance of the kind will be the basis and precedent of all the many similar crises into which the nation will be plunged—when thus affairs stand at the very first, how shall things be expected to stand at the last? For as certain as the management of this strike was successful in involving the national government, it is as certain as anything can be that when the other general strikes shall occur the management will see to it that the national government shall be involved also in those.

Look at the situation exactly as it is in the circumstances that have already occurred. The record is that "nearly all" of the miners are "adherents of the Catholic Church." These adherents of the Catholic Church form one party to the controversy. In the tribunal of arbitration for the settlement of that controversy, the Catholic Church must be largely, if not predominantly, recognized. What is this then, but, in essence and in large measure, simply the Catholic Church settling as arbitrator the difficulty created

by herself as one of the parties to the controversy?

It is not only true, as recorded, that "nearly all the miners" are "adherents of the Catholic Church," but it is equally true that nearly all, if not actually all, of the organizers, managers, and leaders of the unions and strikes of the United States are likewise adherents of the Catholic Church. All that any one needs to convince himself of this is merely to read the names of those that appear in the dispatches and reports of these things. Two of Mr. Mitchell's chief supporters in this coal strike and controversy were Mr. Fahey and Mr. Duffy. And so the names go: Mr. Fahey, Mr. Duffy, Mr. Casey, Mr. Morrissey, and so on, all through the United States. And these things merely show that the dominating influence, the organizing power, the inspiring spirit, of the unions and strikes all through the United States is of the Catholic Church.

Thus, on the one side, strikes and consequent entanglements are raised by the representatives of the Catholic Church. Then the national government is brought into it to save itself from being brought to anarchy. Then a tribunal of arbitration must be selected; and of this tribunal, the Catholic Church must form the material part, to save the nation from the distress and impending anarchy brought upon it by her own representatives. And by thus being represented in the arbitration of settlement of her own difficulty, she gets the recognition of the national government and plants herself in a place where she can dictate terms and hold control, thus swinging the unions and the national government into her purpose; and the carrying out of that purpose is "doing now for the United States what she has done for other nations in the past."

Not only is this so from this standpoint, but from another likewise. It can

easily occur one of these days that unions of governmental employees will get up a strike. In such a case the government itself will be one party to the controversy; and in that case cannot select the arbitrating tribunal. Then, who could come between the government and the strikers as a mediating, arbitrating "source of blessedness"? Only the church. And under the circumstances, what church would it be? None but the Catholic Church: at the very least for the dominating influence in it, because of the recorded fact that "nearly all" the strikers would be "adherents of the Catholic Church." And just as soon as that thing occurs, then the situation will be that the church will be predominant, and will stand above the nation; and there will she remain to the very end of things a predominating power in a union of church and state in all questions of this sort.

And there will be enough questions of this sort to make the thing perpetual. The way is being paved for this every day. It is a common proposition when a strike occurs that *the clergy* shall be selected (and sometimes they put themselves forward) as the ones to bring about the settlement of the troubles. And in the end, though not all these clergy are Catholics, there is no instance in which the Catholic Church must not be recognized, and her clergy form a part of the settling committee.

Thus, in all these things that are of daily occurrence, there is definitely growing up here in the United States the power of the Papacy, and the certain union of church and state, with the Papacy predominating. These events are simply a fuller expression of that declaration made by Bishop Watterson in the world's

Catholic Congress in 1893, that if there is to be found a saviour of this nation from the troubles that are threatening it, "it is from the Vatican that this saviour must come."

And how can the thing possibly be prevented? Suppose that the people of the United States should awake to these things and to the evil in it all? What can they do in any proper way? What can be done in the Philippines to prevent the union of church and state there, when the Papacy has on her side the decision of the Supreme Court of the United States, that the Constitution of the United States does not apply in the Philippines?

Take it in the United States itself. What can be done here to prevent the Papacy from interfering and taking control and joining herself to the national government, when she has on her side the decision of the Supreme Court of the United States that "this is a Christian nation"; when Catholic documents are cited largely by that court as proof of the fact that the establishment of the Christian religion is within the meaning of the Constitution of the United States as it stands; and when Catholicism is recognized as the Christian religion and a part of the "general Christianity" that the Supreme Court has declared is the religion of this nation?

By these two Supreme Court decisions the people of the United States are absolutely inhibited from ever doing in any proper way—in any legal way, in any lawful or constitutional way—anything whatever to save the government, or to protect themselves from the domination of the Papacy in this land in the union of church and state.

The Church of Rome unites in herself all the strength of establishment and all the strength of dissent. With the utmost

pomp of a dominant hierarchy above, she has all the energy of the voluntary system below.—*Macaulay*.

Judge Gordon's Argument Against the Pennsylvania Sunday Law

I

THE argument of Ex-Judge James G. Gordon in the Sunday-law cases at Philadelphia on March 23 is an important contribution to the subject of Sunday legislation. In order that the readers of *THE SENTINEL* may peruse it, we will present it almost entire, and in consequence will have to give it in two parts. Three weeks hence will be printed that portion of Magistrate Gorman's decision in which he considered the contention that the Sunday law was unconstitutional because of its religious character.

After reading the Sunday law and stating that it was the act upon which the proceedings were founded, Judge Gordon said:

This act was passed in 1794, and since then there have been numerous convictions under it. Notwithstanding this fact, it seems to me that a careful consideration of the act itself, in the light of subsequent judicial decisions, will demonstrate that as a criminal statute it fails to possess those requirements necessary to give it validity or make it susceptible of enforcement. It must be remembered that the statute is a purely criminal one, and therefore is to be strictly construed. Nothing is to be taken by implication. The law knows no such thing as an implied crime.

The spirit of our institutions especially is hostile to all legislation punishing men for crime that does not explicitly and accurately define the nature of the offense as well as the punishment. The necessary requirements for a criminal statute are that it shall clearly and definitely describe the act made criminal, and the persons to whom it shall apply, as well as the punishment to be inflicted for its violation.

The act of 1794, if it ever had the characteristic of definiteness and distinctness in describing the acts punishable thereunder, no longer possesses this necessary qualification. An examination of its phraseology will show that even at the time of its passage the acts intended to be affected by it were not defined

or enumerated in it, but were left to the varying judgments of different magistrates as to the meaning and application of certain adjectives constituting the vital part of the statute.

The first interdict of the act is against the doing or performing of "any worldly employment or business whatsoever" on Sunday. This is the foundation of and the only descriptive portion of the enacting clause of the statute. Obviously, therefore, this act, which gives justices of the peace and similar magistrates summary jurisdiction and takes away trial by jury, must depend so far as the guilt or innocence of the citizen charged with its violation is concerned, upon the magistrate's conception of what employments or businesses are "worldly."

If this word "worldly" has any definite meaning, so far as this statute is concerned, it must be as it is opposed to spiritual, religious or other-worldly. And this no doubt is the meaning of the word when the scope and purpose as well as the historicity of the act is concerned. The common meaning of this word is that of temporal occupation or employment as opposed to those energies or occupations of men which relate to eternity. Even in this view of it, it is a clumsy and impossible word to use in a criminal statute. As a matter of fact, all the occupations of men in this world are "worldly"—unless religious meditation or service be regarded as not "worldly." And such occupations or services are not in a proper sense work or employment at all. Religious worship is scarcely to be conceived of as "work" of any kind.

The statute itself does not describe or designate "worldly" employments, and any criminal enactment which leaves the description of the crime to the private judgment of the magistrate is wanting in validity, because there is no definite standard for the guidance of the citizen. The opinions of men as to what constitutes "worldly" employment will be as varying as their religious or non-religious or irreligious views. What would seem "worldly" to one, to another might seem devout, and indeed it is not stretching the imagination too far to say that the general opinion of the community which called this act into being would have stamped not only as "worldly,"

but as irreligious and profane, certain work and occupations now generally regarded as religious, spiritual, or devout.

Shifting and uncertain as this law is in relation to the word "worldly," it is still more indefinite and uncertain in the phraseology it adopts in excluding from its prohibition certain "worldly" work. The act provides that "works of necessity and charity" shall be excepted from its interdict. Here, again, the description of the crime hangs upon the meaning of the word "necessity" and the word "charity," and these words are left to the construction of the respective magistrates throughout the Commonwealth before whom criminal proceedings may be instituted. Could any word more loose and less certain as a guide to the citizen be used than this word "necessity"? What necessity and whose necessity does the act mean? Is it physical necessity, mental necessity, moral necessity, the necessity of comfort, of the preservation of life, of the preservation of health, of the preservation of property—or what must be the nature of the work that will admit it within the protective category of a work of "necessity"? This is left unstated in the act, and gives rise to a question which is susceptible of as many varying constructions as there are dispositions, beliefs, and prejudices among magistrates. Whose "necessity" is referred to? Is it the necessity of him who does the work, or the necessity of him for whom the work is done? Both of these constructions have been held by high authority in this Commonwealth. Judge Strong, in the case of Sparhawk against the railway company, held that the act clearly meant "necessity" on the part of him who performed the "worldly" employment, while Judge Woodward and others on the final determination of the same case held that it meant "necessity" on the part of the community for whom the work was done.

It is under this latter view that the running of street railways has been held not to be a violation of the statute, though the work is "worldly." Without determining which of these two views is correct, they constitute in themselves a forceful illustration of the uncertainty of the act under discussion.

Moreover, it has been held by the highest authority in the Commonwealth, the State's Supreme Court, that changed social conditions may make that a "necessity" to-day which was not a necessity when the act was passed, so far as public requirements are concerned.

A distinguished Supreme Court justice, in thus construing the statute, . . . argued that by the mere progress of years and increase of population and changed social conditions "worldly" work and employment which would have been criminal in 1794 were now works of "necessity," and, therefore, not criminal.

How uncertain, then, is that act of assembly, called a criminal statute, which has the fact of crime changing from day to day or year to year or decade to decade, and how shall the citizen know when the social conditions are so altered that an act once criminal has become meritorious and "necessary"? The laws of Draco have become historical examples of cruelty more from the fact that he posted them so high that the people could not read them than because of the severity of their penalties. A law which changes from day to day and depends upon the private beliefs and opinions of a magistrate for its meaning is Draconian in its nature, and just as much unknown as though it were incapable of being read.

It must be remembered that the act of 1794, but for the exception "works of necessity and charity," dooms every citizen of this Commonwealth to absolute idleness on the first day of the week. The question whether the "worldly" work performed is done for profit or not does not affect the question. All "worldly" work is absolutely prohibited, except in the cases specially taken out of the prohibition by the indefinite phrases referred to.

[With the exception of the first and last sentences, the matter that was quoted on the first page of THE SENTINEL two weeks ago is omitted here.—EDITOR.]

The radical and exceptional nature of the legislation is not changed by the fact that the prohibition relates to Sunday. It is still legislation in derogation of natural rights, and the statute is left to depend for its determination upon the uncertain meaning of the words "worldly" and "necessity," and the peculiar mental or moral or spiritual views of the magistrate called upon to construe the statute. How is it possible that an act which could not be performed because the necessary knowledge for its performance did not exist when the legislation of 1794 was passed can, by virtue of that legislation, be a crime in 1903? As the learned supreme court judge heretofore referred to said, there were no telegraph or steamboats or railways in 1794, and they, therefore, could not have been within the legislative purview.

Since the decision of Sparhawk against the railway company in 1867, when some of the judges regarded the running of passenger cars on Sunday as a work of necessity, and some as not being a work of necessity, that form of "worldly" employment has steadily continued and increased without complaint or interruption, and less than two years ago was expressly decided by a distinguished judge of the Common Pleas of Berks County—Judge Endlich—to be a work of necessity, and prosecutions under the act of 1794 brought before him were dismissed upon that ground.

If the running of passenger railways is within the exception to the act of 1794 on the ground of public necessity, because of the numbers of people depending upon them for certain comforts and conveniences of life, how much more is the publication of the Sunday newspaper! For one person inconvenienced or accommodated on Sunday by the running of street passenger cars, a hundred are accommodated and inconvenienced by the Sunday newspaper. And if the nature of the employment in its effect upon the quiet of the day is to be considered, the publication and distribution of the Sunday newspaper is the cause of far less noise, disturbance and breaking of the "Sunday rest" than the railway.

Some of the cases in our own State have justified the enactment of the legislation of

1794 upon the ground that the quiet of public worship and the peace of the household as a place for undisturbed religious meditation were the reasons for the passage of the law in question. Judge Thompson of our Supreme Court expressly ruled that the injury intended to be prevented by the act of 1794 was "altogether of a spiritual character," and that it was not of a "temporal nature." He also said that it was "difficult for any one to conceive of agencies beneficial and innoxious and administering to the health, comfort, and prosperity of all who came within their influence during six days of the week, becoming on the seventh pernicious to peace and destructive to property." For these reasons that learned judge denied equitable relief in the case before him (which was a bill for an injunction), though he expressed the opinion that the running of said cars was not a necessity under the act of 1794, others of his brethren, however, holding a different opinion. This again emphasizes the point that this so-called criminal statute depends not upon any distinct and ascertainable fact or defined crime, but upon the varying opinions of different magistrates.

For these reasons, therefore, the act of 1794 should be held to be void for indefiniteness and as incapable of enforcement under present conditions.

Legal Sunday Observance Uncertain and Indefinite in Florida Also

The sheriff of Duval County, Fla., in which is situated the city of Jacksonville, was recently called upon by a citizen of that place to stop what was termed the "unlawful assemblage" of persons at a point just outside the limits of the city to witness and participate in bicycle racing on Sunday. But the sheriff was not clear as to "whether there was an actual violation of the [Sunday] law as understood and interpreted in this [that] community," and hesitated to act in the matter. The exhibitions were "orderly and high-toned"; "many people could not attend such an entertainment if given in the days of the week"; "such races are held in the larger cities throughout the country

on Sunday and afford harmless recreation to thousands of people, which otherwise they could not have"; among those who had attended were "certain court officers, county and city officials, and numerous citizens of the highest standing"; and there had been no reports of "gambling or disorder." The sheriff ventured to examine and reason upon the Sunday law itself. He found that the only provision under which he could act, if he could act at all, was that forbidding the following of "any pursuit, business or trade on Sunday, . . . except the same be work of necessity." He then very pertinently and logically reasoned:

If this bicycle racing is a violation of

law, . . . what about running the street-cars? What about running excursions by boat and rail, so generally practised without complaint, so far as I know? What about the running of passenger trains on Sunday? The operation of street-car lines is a "pursuit, business or trade," as much as bicycle racing. Yet, I apprehend, if I should seize the street-cars and prohibit their running on Sunday, the public would not sustain me. It would be readily claimed that the operation of street-cars, excursion trains and boats is "work of necessity," and, therefore, excepted. Yet is not the claim rather a subterfuge than an actual truth? So with regard to operating livery, stables on Sundays—yet I have never known a time when the livery stables were closed on Sunday. Is either one any more "work of necessity" really than playing baseball or running bicycle races?

In another section of the law the sheriff found that the keeping open of stores and the disposing of goods on Sunday was prohibited except "in cases of emergency and necessity," when "merchants, shopkeepers and others" might "dispose of the comforts and necessaries of life to customers, without keeping open doors." Calling to mind the fact that with the sanction of the city government "drugs, newspapers, cigars, soda-water, ice-cream, bread, cakes, fruit, ice and milk may be sold and places kept open for that purpose" on Sunday in Jacksonville, the sheriff observed that "here again we have considerable latitude." "Is soda-water a necessity?" he asked himself. "Are cigars necessities? Could they not be purchased on Saturday? How about ice-cream and fruit?" But he was not disposed to set up his judgment "against what seems the universal judgment of the people in construing the meaning of the words 'necessaries' and 'comforts'"; he did not think it his duty "to dispute with the public the fact of such things [as livery stables, excursions, street-cars, and other things that "might be added to almost indefinitely"] coming under the head of 'work of necessity.'" But all this convinced him that the step he was

asked to take was "not a certain and plain one, free from difficulty." Because of the uncertainty as to whether it was his duty to act in the matter he desired the citizen who made the demand "to share the responsibility" with him "by making affidavits and securing warrants for the arrest of the parties violating the law." This the citizen "declined to do, asserting that it was my [the sheriff's] duty to stop the racing without any warrant." The sheriff then consulted an attorney, who gave it as his opinion that the racing on Sunday was a violation of the law. The sheriff informed the lawyer that if he took action in the matter it seemed to him that "similar action would have to follow in other instances," and that he did not think the governor of the State would hold him "responsible, for determining what was and what was not a violation of law," nor require him "to act without a warrant" in such cases. The attorney then advised him to "go to see the governor and lay the whole matter before him." This he did, his motive being "to ascertain my duty from the highest source," and then, "when it was clear," "to perform it." The governor told him that it was his duty "to enforce laws as they exist on the statute books." All this we learn from a rather lengthy and certainly unusual "notice," or "manifesto" as the newspapers style it, that the sheriff, by advice of his attorney, caused to be published on April 16. Having given the history leading up to his act, the sheriff concluded the document by giving this notice:

Having ascertained that in the opinion of my counsel such racing is in violation of the statute, and that I have authority to make arrests in such cases without warrants, I hereby give notice that I will arrest all parties engaging in the business of bicycle racing on Sunday. I give further notice that baseball and other games, operation of shooting galleries and the like, will not be permitted on Sundays. . . . I give further notice that if

I observe, or complaint is made to me by those who know, and the facts bear them out upon investigation, I will make arrests wherever actual violations of the law, as above noted, are taking place. . . .

The notice states that "the mere playing of baseball for fun and exercise, there being no admission charged or other consideration involved, will not be regarded as a violation of law." On the same day that the sheriff's "manifesto" appeared there was published an opinion on the subject that had been prepared at the request of a client by Maj. Alexander St. Clair-Abrams, a very able and prominent Florida attorney. A portion of this opinion read as follows:

The constitutions of the United States and of the State of Florida guarantee to the people the right to assemble anywhere, at any time, and on any day. In England an "unlawful assemblage" has been construed to mean an assemblage of persons with intent to commit some unlawful act or acts. In this State there is no such thing as an "unlawful assemblage," since the right to assemble cannot be impaired or restricted in any way. The individuals thus assembling may by riot, tumult or other breach of the peace subject themselves to arrest, but neither the sheriff nor any other person has the right to arrest any individual in any gathering of the people merely because he or any other officer concludes that the purpose of such assemblage is unlawful. . . . The right to assemble is not confined to any particular day in the week or year, but is as much vested on Sunday as on any other day in the week. The position taken by Mr. Dodge [the citizen who had demanded that the sheriff stop the Sunday racing and assemblage] that the sheriff of this county has a right to arrest men without warrant because the sheriff or Mr. Dodge concludes that they are violating or intend to violate the law, is directly in conflict with the declaration of rights of the constitution of this State; and it does not matter that those rights have been violated in the past, they are none the less guaranteed, and the sheriff of this county possesses no more authority to arrest persons without a warrant than Mr. Dodge himself. If the sheriff can assert the judicial authority of declaring an assemblage unlawful where a number of persons gather to witness the riding of bicycles,

he can with equal right declare an assemblage of persons in a church on Sunday unlawful, and proceed to disperse it or to arrest the persons so assembled. Such an idea cannot be tolerated for a moment.

We are persuaded that the position here taken is good law. It is a fact that nearly all Sunday enforcement calls for the assumption of judicial authority by executive officials. "As regards bicycle racing on Sunday," Mr. St. Clair-Abrams says that he knows of "no law which prevents any persons from riding bicycles within an inclosure any more than I know of any law which prevents the same persons from riding bicycles on the public streets on that day." In his opinion "there is nothing in our laws to prohibit anything of the kind," "even where a price for admission is charged," and he believes "the courts will sustain this view of the matter." He says that "Sunday is the only day on which thousands of persons can obtain any recreation whatever," and that "to deprive these persons of this opportunity for recreation was never, in my opinion, the intention of the laws, and any construction that they were intended to prevent this is a perversion of the purpose of the legislative body which enacted them." He declares that he has "very little patience with the Puritanism which 'hangs a cat on Monday for killing a rat on Sunday,' or which in its construction of statutes, designed purely for police regulation, perverts their clear intention, and, in effect, seeks to compel people to a rigid observance of the religious and ecclesiastical doctrines of some particular church." He "never attends baseball playing or bicycle riding on Sunday, or, for that matter, on any other day," but he "cannot see wherein those who attend them should be stigmatized as participants in an 'unlawful assemblage,' or wherein the playing of baseball or the riding of bicycles in an inclosure can be construed to be a crime." He concluded by express-

ing the opinion that "if the sheriff complies with the demands of Mr. Dodge, before he gets through he will require as bondsmen such millionaires as Mr. Rockefeller and Mr. Flagler to meet the judgments against him for damages that juries will award against him for his unauthorized violation and invasion of the rights of the people." So it appears that interesting times are at hand in Jacksonville as to the matter of the Sunday law and its enforcement. Of course, notwithstanding Mr. St. Clair-Abrams's opinion as to the legality of the Sunday racing, which is no doubt well-grounded in common sense and in harmony with the present tendency of the courts in dealing with the Sunday law, Mr. Dodge and the sheriff are not straining the law a particle. The trouble in this case is not a Puritanic construction, but a Puritanic statute. Whatever may have been the purpose of the Florida legislators when they adopted the Sunday law as a part of the code of that State, it requires but a reading of the statute itself and a slight knowledge of its genealogy to show any one that its pur-

pose is to compel people to the observance, and to a much more rigid observance than public sentiment will now permit to be compelled, of a religious and ecclesiastical rite or custom, which, though it may not be "of some particular church," is of some particular religious class, which, of course, amounts to the same thing. Now if such a law is not challenged and repudiated directly, the next best thing is that it be emasculated by construction and repudiated indirectly. If consistently and logically adhered to the position of Mr. St. Clair-Abrams, which we are glad to say is the position of men of his class generally, would practically nullify the Sunday law and prevent all Sunday enforcement, for its logic is to make the Sunday law prohibitive of only such things as are amply dealt with by other legislation, and protective of only such things as are protected by other legislation. It leads logically to the sound position that there is no crime peculiar to Sunday, and that that which is proper and lawful on other days cannot be criminal nor properly illegal on Sunday.

According to the Washington (Ind.) *Gazette* of March 31 a groceryman of that place went about the city on the preceding Sunday and "took notes of all drug stores, cigar stands, livery stables, meat shops, bakery shops, confectionery stores, ice-cream parlors, newspaper stands, saloons, etc., that were open and doing business," and intimated that "they would have to close up next Sunday and all future Sundays or he would prosecute them." The groceryman had been in the habit of opening his store for a short time on Sunday mornings, but had been compelled to cease doing so by the clerks' union. He said he found that the members of the clerks' union were in the habit

of patronizing most of the places named on Sundays, and that he proposed to "give back to these young fellows some of the medicine they gave me." He said he knew it was very convenient to be able to be served at these places on Sunday, but that it was "just as convenient for other people to be able to get groceries." This groceryman may not be moved by the highest of motives, but certainly the clerks will be last persons who can complain if he carries out his Sunday-enforcement threat.



It is announced from Fargo, N. Dak., that "the barber shops will be closed hereafter on Sunday under the law recently signed by the governor."

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READ THESE QUOTATIONS

Lately the "Americanists" have come into influence again, and IN THE MISSION OF GOVERNOR TAFT TO ROME THEY SCORED A DISTINCT POLITICAL SUCCESS.—*The Independent*, March 5, 1903.

While our government has been far from doing the right thing by way of recognizing American Catholics in the Philippines, we believe justice will eventually prevail. FOR THIS, THE DEMAND OF FIFTEEN MILLIONS OF AMERICAN CATHOLICS IS SOMETHING OF A GUARANTEE. IT IS ONE WHICH NO ADMINISTRATION DARE IGNORE.—*Church Progress (Roman Catholic)*, St. Louis, July, 1902.

We respectfully submit that THE CLAUSE OF THE CONSTITUTION WHICH REQUIRES THE ABSOLUTE SEPARATION OF CHURCH AND STATE WAS INTENDED BY THE FRAMERS OF THE DOCUMENT TO MEET CONDITIONS IN THE UNITED STATES OF AMERICA, AND NOT THOSE WHICH OBTAIN . . . AMONG A PEOPLE UNANIMOUSLY OF ONE FORM OF RELIGIOUS BELIEF.—*From Memorial sent to the President of the United States by the Roman Catholic clergy of the diocese of Cincinnati*, July, 1902.

To-day we look back at that ominous past ["the despoiling of the Papacy" and "its isolation by the courts of the world"] and wonder not so much that it ever could have existed, AS THAT IT SHOULD SO MARVELLOUSLY HAVE CEASED TO EXIST. Everywhere to-day the world, non-Catholic as well as Catholic, is hastening to greet with sincerest acclamation the powerless prisoner of the Vatican. . . . WE CAN SCARCE REALIZE THE FULL NATURE AND EXTENT OF THE TRANSFORMATION WROUGHT IN THE LAST QUARTER OF A CENTURY.—"Rev." Hugh T. Henry (*orator of the day*) at the "silver jubilee" celebration in honor of the Pope in the Cathedral of Sts. Peter and Paul, Philadelphia, March 3, 1903.

Our country has had its experience of his [Pope Leo's] influence; for it was his gentle forbearance, that never uttered, nor permitted to be uttered, a word that would wound or offend, which has SO SKILFULLY GUARDED DIPLOMATIC RELATIONS with a proud and victorious people that the wild clamors of religious fanaticism HAVE BEEN QUELLED and the unworthy aims of designing politicians HAVE BEEN THWARTED, while he, the great Father of Christendom, with absolute trust in the fearlessness and keen sense of justice of our great Chief Executive, as well as the honor of our people, SERENELY LEGISLATES FOR THE RELIGIOUS GOVERNMENT OF THE NEW POSSESSIONS, and gives an assurance that the Catholics of the Philippines will be the most devoted supporters of the American Republic.—"Father" Thos. J. Campbell, (*orator of the day*), at the "jubilee" celebration in honor of the Pope in St. Patrick's Cathedral in New York on March 3, 1903.

And then read, and get others to read, from beginning to end the new series of articles

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